

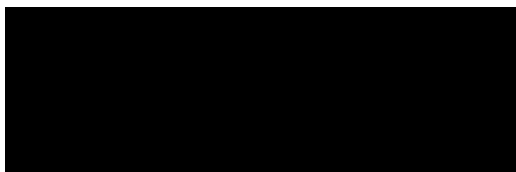
PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



U

FILE:



Office: CALIFORNIA SERVICE CENTER

AUG 03 2004
Date:

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant states she cannot reach [REDACTED]. She indicates she can prove she worked for him by submitting affidavits from other people.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). *See* 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. *See* 8 C.F.R. § 210.3(b).

On the Form I-700 application, the applicant claimed to have performed 98 man-days of qualifying agricultural services for Salvador Sandoval at the [REDACTED] farm in San Joaquin County, California, from May 1985 to August 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment affidavit, both purportedly signed by Salvador Sandoval. According to the employment affidavit from Salvador Sandoval, the applicant was paid in cash for which there are no records.

In attempting to verify the applicant's claimed employment, the director acquired information which contradicted the applicant's claim. On June 3, 1991, [REDACTED] wife of the applicant's purported employer, [REDACTED] stated in a declaration to the U.S. Immigration and Naturalization Service (INS), and to the U.S. District Court in Sacramento, California, that she and her husband did in fact employ several people for 90 days or more from May 1, 1985 to May 1, 1986. [REDACTED] submitted a list of these individuals. The applicant's name does not appear on this list.

The applicant was advised in writing of the adverse information, and of the director's intent to deny the application. The applicant then furnished a photocopy of an affidavit from [REDACTED] stating that he knew the applicant lived in the United States since 1984 and resided at his place of residence from July 27, 1985 to October 25, 1986. Also submitted was a photocopy of a purported quarterly record of employment showing the applicant's employment for Salvador Sandoval. Nevertheless, the director found that the applicant had not overcome the adverse evidence, and denied the application.

The director later reopened the matter, and issued another notice of intent to deny, in which she more specifically addressed the evidence the applicant had provided. The director explained that [REDACTED] stated she had signed many blank affidavits and turned them over to [REDACTED] who would then sell the forms. The director noted that [REDACTED] had been convicted for these activities, and pointed out that

the applicant's Form I-705 affidavit was notarized by [REDACTED]. The director focused on the supposed quarterly record, and stated that, since [REDACTED] both indicated a lack of accurate employment records, the quarterly record was therefore suspicious.

The applicant responded by furnishing two more affidavits, from [REDACTED]. The director again denied the application, pointing out that, while [REDACTED] stated in this affidavit that the applicant worked with him for [REDACTED] he had said nothing of the kind in his initial affidavit. The director further noted that [REDACTED] claimed to have been a foreman for [REDACTED] and yet Mr. [REDACTED] name did not appear on the list of employees provided by [REDACTED]. The applicant did not respond to the director's most recent denial.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. See 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. See 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.)*.

In conjunction with a declaration to INS and to the U.S. District Court in Sacramento, California by [REDACTED] wife of the applicant's purported employer, [REDACTED] a list was compiled of those employees who performed at least 90 man-days of field work for the [REDACTED] during the qualifying period. The applicant's name was not included on this list. Additionally, the director has specifically addressed the evidence the applicant has submitted in an attempt to overcome the adverse information, and has raised very logical questions regarding the credibility of such evidence.

It is concluded that the applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.